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No. 275

# In the Supreme Court of the United States

OCTOBER TERM, 1929

VESTA BATTERY CORPORATION, PETITIONER

*v.*

THE UNITED STATES

*ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS*

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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### OPINION BELOW

The opinion of the Court of Claims (R. 19–28) is not yet officially reported.

### JURISDICTION

The judgment sought to be reviewed was entered May 6, 1929. (R. 28.) Petition for writ of certiorari was filed July 30, 1929. (R. 28.) The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925.

## THE QUESTION PRESENTED

Whether petitioner established in the court below that the electric storage batteries manufactured and sold by petitioner were not "parts or accessories for" automobile trucks, automobile wagons, other automobiles or motor cycles within the meaning of Section 900 (3) of the Revenue Acts of 1918 and 1921, and of the Regulations of the Commissioner of Internal Revenue made by authority of said Acts.

## THE STATUTES

Section 900 of the Revenue Act of 1918, c. 18, 40 Stat. 1057, 1122, as far as applicable, provides:

> SEC. 900. That there shall be levied, assessed, collected, and paid upon the following articles sold or leased by the manufacturer, producer, or importer, a tax equivalent to the following percentages of the price for which so sold or leased—
>
> (1) Automobile trucks and automobile wagons (including tires, inner tubes, parts and accessories therefor, sold on or in connection therewith or with the sale thereof), 3 per centum.
>
> (2) Other automobiles and motorcycles (including tires, inner tubes, parts, and accessories therefor, sold on or in connection therewith or with the sale thereof), except tractors, 5 per centum.
>
> (3) Tires, inner tubes, parts, or accessories, for any of the articles enumerated in

subdivision (1) or (2), sold to any person other than a manufacturer or producer of any of the articles enumerated in subdivision (1) or (2), 5 per centum.

Section 900 of the Revenue Act of 1921, c. 136, 42 Stat. 227, 291, and Section 600 of the Revenue Act of 1924, c. 234, 43 Stat. 253, 322, are, so far as pertinent to the issues herein, substantially the same as in the earlier Act.

REGULATIONS OF THE COMMISSIONER OF INTERNAL REVENUE

Article 14 of Regulations 47 (December, 1920, edition), adopted by the Commissioner is, in part, as follows:

> Any article which has reached a state of manufacture wherein it is in itself a component part or accessory, and is of such a nature that it may be used or attached by an ordinary repair man or individual user as distinguished from a manufacturer or producer, is subject to tax as a "part or accessory."

Article 15 of the same regulation is, in part, as follows:

> A "part" for an automobile truck, automobile wagon, other automobile, or motor cycle is any article designed or manufactured for the special purpose of being used as or to replace a component part of any such vehicle and which by reason of some peculiar characteristic is not such a commercial commodity as would ordinarily be

sold for general use and which is primarily adapted only for use as a component part of such vehicle.

* * * * *

* * * Articles, however, which ordinarily would be classed as commercial commodities become parts when, because of their design or construction, they are primarily adapted for use as component parts of such vehicles.

Component parts of articles taxable under this definition are taxable when sold separately, if they have reached such stage of manufacture that they are primarily adapted for use as a component part. * * *

Article 16 contains the following provisions:

An "accessory" for an automobile truck, automobile wagon, other automobile, or motor cycle is any article designed to be attached to or used in connection with such vehicle to add to its utility or ornamentation and which is primarily adapted for use in connection with such vehicle, whether or not essential to its operation.

* * * * *

Articles which have a general commercial use and which are not especially designed and peculiarly adapted for use in connection with automobile trucks, automobile wagons, other automobiles, or motor cycles are not subject to tax as "parts" or "accessories."

* * *

* * * * *

Parts or accessories for automobile trucks, automobile wagons, other automobiles, or

motor cycles primarily adapted for use on or in connection therewith when sold for any other purpose are not taxable provided the purchaser files with his order a statement that such parts or accessories are to be used on or in connection with another article of commerce not enumerated or included in subdivisions (1), (2), or (3) of section 900. For example, a self-starter primarily adapted for use on an automobile if sold to a manufacturer of motor boats, such manufacturer stating in his order that it is to be used in the manufacture of a motor boat and not upon an automobile, is not taxable.

STATEMENT

In its suit in the court below petitioner asked judgment for $377,393.70, with interest, assessed against it and paid as excise taxes with respect to storage batteries manufactured and sold by it for the period February, 1919, to September, 1925. The Court of Claims on May 6, 1929, entered judgment for the United States, dismissing petitioner's suit.

The findings made by the Court of Claims show that petitioner is a corporation organized under the laws of the State of Illinois and engaged in the manufacture and sale of storage batteries. (R. 19.)

Petitioner between June 3, 1919, and October 20, 1925, paid to the United States as excise taxes with respect to the sale of said storage batteries the amount of $376,324.45. (R. 20–25.) On February

7, 1924, petitioner filed with the Commissioner of Internal Revenue a claim for refund of said taxes in the sum of $304,127.25, which claim was rejected by the Commissioner of Internal Revenue June 24, 1924. On November 27, 1925, petitioner filed with the Commissioner of Internal Revenue claim for refund of said taxes in the sum of $73,266.45, which claim was rejected by the Commissioner February 27, 1926. (R. 26.)

The petitioner sold said batteries principally to dealers and jobbers who were in the business of conducting garages and service stations. Although storage batteries of various types are manufactured and used for various purposes, the storage batteries in question were of the type especially suitable for use on automobiles as replacements for the batteries forming a part of the original equipment of said cars and were not adapted to any other primary purpose or use. Petitioner issued a catalogue in which its batteries were advertised for use in automobiles, in which it broadcasted the slogan, "A Vesta battery for every car," and requested prospective purchasers in ordering batteries to specify the kind of automobile for which the battery was required. Fifteen types of batteries were manufactured and sold by petitioner, any one of which could be used in some automobile. (R. 27–28.)

## ARGUMENT

The question raised is very similar to that involved in *Universal Battery Co.* v. *United States*, No. 127, October Term, 1929, now pending in this Court on petition for writ of certiorari to the Court of Claims; and we refer the Court to the argument in the brief for the United States in opposition filed in that case.

In the instant case the findings are more specific than were those in the *Universal Battery* case. In the instant case petitioner argues (Petition, p. 4):

> * * * It was not found that plaintiff's batteries were used on automotive vehicles designated in the taxing statute, nor does it appear that petitioners' batteries were not adaptable for all of the uses enumerated above. Neither was it found that the petitioner's batteries were not used for all of such purposes. (R. 23–24.)

The Court of Claims did, however, find that the batteries manufactured and sold by petitioner "were of the type especially suitable for use on automobiles as replacements for the batteries forming a part of the original equipment of such cars and were not adapted to any other primary purpose or use," and that they were advertised for use in automobiles. (R. 27–28.)

## CONCLUSION

For the reasons set forth in the brief for the United States in opposition to the petition for writ of certiorari of Universal Battery Company, we submit that the petition for writ of certiorari in the instant case should be denied.

Respectfully submitted.

CHARLES E. HUGHES, Jr.,
*Solicitor General.*

HERMAN J. GALLOWAY,
*Assistant Attorney General.*

CLAUDE R. BRANCH,
*Special Assistant to the Attorney General.*

R. C. WILLIAMSON,
*Attorney.*

SEPTEMBER, 1929.

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For the reasons set forth in the brief for the United States in opposition to the petition for writ of certiorari of Universal Battery Company, we submit that the petition for writ of certiorari in the instant case should be denied.

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